

November 30, 2004
IMMEDIATE RELEASE

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IN THE SUPREME COURT OF THE STATE OF IDAHO
DOCKET NO. 28269

TIMOTHY A. DUNLAP,)	
)	
Petitioner-Appellant,)	Boise, September 2004 Term
)	
v.)	2004 Opinion No. 124
)	
STATE OF IDAHO,)	Filed: November 30, 2004
)	
Respondent.)	Frederick C. Lyon, Clerk
)	
)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Caribou County. Hon. William H. Woodland, District Judge.

District court order denying petition for post-conviction relief, affirmed.
Case remanded for further sentencing proceedings.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.
Mark James Ackley, Deputy State Appellate Public Defender, Boise, argued.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent. L.
Lamont Anderson, Deputy Attorney General, Boise, argued.

The Idaho Supreme Court denied Timothy Dunlap's appeal from the district court's order denying his petition for post-conviction relief involving his guilty plea to first-degree murder. The Idaho Supreme Court unanimously ruled that the district court's dismissal was appropriate.

On October 16, 1991, Dunlap entered and robbed the Security State Bank of Soda Springs, Idaho. Dunlap entered the bank, stood within a few feet of bank teller Tonya Crane and ordered her to give him all of her money. Without hesitation, Tonya Crane did so. Dunlap immediately pulled the trigger of his sawed-off shotgun which was less than two feet from Tonya Crane's chest and immediately killed her. He was subsequently arrested by police and after being given his Miranda rights confessed to the murder and to another murder that had previously occurred in Ohio. The following day, Dunlap again

confessed and explained how he planned and completed both murders. Subsequently, Dunlap arranged to be interviewed by an associate editor of the *Albany New Tribune* in Indiana. During the interview Dunlap explained to the reporter how he murdered his girlfriend in Ohio and subsequently planned to rob the Soda Springs bank. He then described the bank robbery and Tonya Crane's murder.

On December 30, 1991, Dunlap pled guilty to first-degree murder for shooting Tonya Crane during the course of the robbery. As a result of a plea negotiation, the state dropped the robbery charge as well as the use of a firearm in the commission of the robbery charge. Dunlap then pled guilty to first-degree murder and use of a firearm in the commission of a murder. The plea agreement allowed the State of Idaho to seek the death penalty. The plea agreement recognized that Dunlap had been indicted in the Ohio killing but provided that the state could not call as a witness at the Idaho sentencing any Ohio State Police officer, forensic pathologist, or other law enforcement official. The State also agreed as part of the plea agreement not to introduce any pictures of the Ohio victim taken by the Ohio law enforcement authorities.

At the defendant's plea hearing he entered his plea of guilty and the district court judge was advised that he had spent time in certain hospitals and mental health wards for seizures or other mental disturbances. The district judge then requested those records to ensure there were no problems with accepting Dunlap's guilty plea. The district judge continued the plea hearing and reviewed those records. Having reviewed all of those records, the district court found Dunlap to be mentally competent to enter a plea of guilty and accepted the guilty plea. Dunlap was subsequently sentenced to death by the district court and he appealed his conviction and sentence. The Idaho Supreme Court affirmed those decisions. Subsequent to that time, Dunlap filed a post conviction relief action which was dismissed by the trial court and subsequently reinstated by the Idaho Supreme Court. As a result of that reinstatement Dunlap went to the district court for post conviction review. During that post conviction review, the district court ordered a new sentencing hearing but denied Dunlap's guilt-phase post conviction relief arguments. He then timely appealed from the denial of the post conviction application.

The Idaho Supreme Court agreed with the district court that Dunlap's trial counsel were not ineffective by not having Dunlap evaluated or seeking a mental competency hearing before entering his guilty plea. The Court agreed trial counsel was not ineffective in negotiating and recommending the plea agreement entered into by Dunlap. Trial counsel was not ineffective in not seeking withdrawal of the guilty plea prior to sentencing because he would be able to address all issues at trial.

The Idaho Supreme Court found that as a result of the overwhelming evidence against Dunlap, given his confessions as well as interviews with a newspaper editor, that the trial strategy of his attorneys in trying to curry favor with the sentencing court as well as mitigating any gory or excruciating evidence produced at trial was a reasonable strategy to escape the death penalty. The Idaho Supreme Court agreed and also found that Dunlap did not suffer from any mental illness and was competent to enter his plea of guilty. The Idaho Supreme Court specifically found that the trial judge had reviewed all

medical or mental records available to trial counsel and agreed with the trial court that there was no sign of a mental illness which would disqualify Dunlap from entering a plea of guilty. Additionally, any emotional or mental disturbances may also be explored at the new sentencing hearing as mitigating factors. The Idaho Supreme Court did not agree with Dunlap's argument that the plea agreement he had entered into was unconscionable. The Court declined to extend the contract analogy for plea agreements to include the affirmative offense of unconscionability. As a result, the Court upheld the district court's dismissal of the post conviction relief and the matter was remanded to the district court for further sentencing hearings.